

1869
June 15

Before Mr. Justice Kemp and Mr. Justice Glover.

SYAD WALI ALAM (DEFENDANT) v. MUSSAMUT BIBI NASRAN
(PLAINTIFF)*

Appeal—Arbitration—Act VIII. of 1859 s. 325—Stamp.

An appeal lies from an order enforcing execution of an arbitration award or from a decree under section 325 of Act VIII of 1859. Where the appeal was brought on an insufficient stamp, the appeal was dismissed without prejudice to the appellant bringing a fresh appeal within 20 days on a full stamp.

Messrs. *A. T. T. Peterson and R. E. Twidale* for appellant.

Baboo Anukul Chandra Mookerjee and Munshi Mohamed Yusoff for respondent.

KEMP, J.—It appears in this case that certain disputes between the defendant, appellant, and plaintiff, respondent, were referred to private arbitrators.

The opposite party (Bibi Nasran) applied to the Court below, under section 327 of Act VIII. of 1859, on a stamp of the value of ordinary petitions to the lower Court, viz. one rupee.

The present appeal on the part of the defendant is brought on a stamp of two rupees, and not on a stamp required for a regular appeal. Two objections have been taken by the pleader for the opposite party; 1st, that no appeal at all will lie; and 2nd, that if any appeal will lie, the appeal ought to have been presented on a stamp required for a regular appeal, and not upon a two, rupee stamp.

There is no ground for the first contention that no appeal at all will lie, inasmuch as there can be no doubt that, under the provisions of section 325 the order for the execution of the arbitration award must be considered to be a decree of Court; an appeal will therefore lie.

On the second ground, we are of opinion that this contention is good, and that in accordance with the ruling in the case of *Ram Coomar Chowdhry v. Nobin Chunder Chowdhry* (1), and in a decision (2) by Justices LOCH and NOEMAN, the appeal ought to have been made on a full stamp.

The appeal is therefore dismissed with costs, without prejudice to the appellant to bring a fresh appeal within 20 days on a full stamp.

* Miscellaneous Regular Appeal, No. 178 of 1869, against the decree of the Subordinate Judge of Patna, dated the 14th February 1869.

(1) W. R., 1864, Mis., 33.

(2) Mis. Ap. 71 of 1863; Dec. 22nd, 1863.